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No. 85-1388 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CARRIE ROSE, Widow of
WILLIAM L. ROSE, JR., Deceased, Employee,
Petitioner,

v.

ARKANSAS STATE POLICE, Employer,
and
PUBLIC EMPLOYEE CLAIMS DIVISION
ARKANSAS INSURANCE DEPARTMENT, Carrier,
Respondents.

On Petition For Writ Of Certiorari To The Arkansas Court Of Appeals

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION

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Respondents

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QUESTION PRESENTED FOR REVIEW

Whether Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) which provides that State workers' compensation funds for public employees shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received under any State or Federal program or Act of Congress violates the Supremacy Clause of the U.S. Constitution and constitutes an unlawful conflict in State and Federal legislation?

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OPINIONS BELOW

The opinion of the Arkansas Court of Appeals dated October 16, 1985, *Rose v. Arkansas State Police*, 16 Ark. App. 96, 697 S.W.2d 927 (1985), from which review is sought, is set forth in petitioner's Appendix A, pp. A-2—A-7. The opinion of the Arkansas Workers' Compensation Commission dated February 28,

1985 appears as petitioner's Appendix D, pp. D-1—D-4. The opinion of the Administrative Law Judge dated May 31, 1984 is shown as petitioner's Appendix E, pp. E-1—E-5.

JURISDICTIONAL STATEMENT

Respondents deny that this court has jurisdiction to review this case as respondents genuinely believe no federal question is presented, no Supremacy Clause question is presented, no conflict between state and federal statute is presented, and therefore, no question exists which affords this honorable court a basis for granting review.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article VI, Sec. 2 of U.S. Constitution (Supremacy Clause):

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

42 U.S.C. Sec. 3796 (Public Safety Officers Benefits Act):

> "(a) Amount; recipients. In any case in which the Administration determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sus-

tained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer; . . .

(e) Reductions from final benefit payment. The benefit payable under this part shall be in addition to any other benefit that may be due from any other source . . ."

Act 929 of 1981 of the Arkansas General Assembly (Ark. Stats. Ann. 12-3605(G) (Supp. 1983)):

"(G) In the event that any public employee who is entitled to receive workers' compensation benefits under the provisions of this Act, as a result of injury, disability or death, and such injuries, disabilities, or death gives rise to an entitlement of benefits under a State or Federal program or under an Act of Congress providing benefits for public safety officers serving a public agency in an official capacity, with or without compensation as a law enforcement officer or as a firefighter or in any other capacity, the state workers' compensation funds shall be entitled to a credit against its liability for payment of benefits received under any State or Federal program or Act of Congress."

U.S. Constitution, Amendment X:

"*Rights reserved to states or people.*—The powers not delegated to the United States by the Constitution, nor prohibited by it to

the states, are reserved to the states respectively, or to the people."

STATEMENT OF THE CASE

Respondent concurs with the factual recitations of petitioner's statement of the case, but takes strong issue with the propriety of petitioner setting forth argumentative material by quoting from the opinion of the Administrative Law Judge who "adopted" portions of petitioner's argument contained within her brief filed initially in this case.

ARGUMENT

Act 929 of 1981, Section 4, of the Arkansas General Assembly (Ark. Stats. Ann 12-3605(G)) does not violate the Supremacy Clause of the U.S. Constitution (Article VI, Sec. 2). It does not provide that the $50,000.00 federal benefits paid petitioner under the Public Safety Officers Benefits Act (42 U.S.C., Section 3796) "shall be credited" against the State's (respondents') liability for payment of workers' compensation death benefits to petitioner. In fact, Act 929 of 1981, Section 4, does not mention the Public Safety Officers Benefits Act. It simply provides that the state workers' compensation funds shall be entitled to a credit against its liability for payment of workers' compensation benefits to the extent of the benefits received "under any *State or Federal* program or act of Congress."

Petitioner characterizes the instant case as one in which there is a conflict between state and federal statutes which "presents a compelling question for decision by this Court." Petitioner further alleges that the effect of the State statute in question is to nullify

the federal statute and subsidize the State of Arkansas' workers' compensation program. A review of the statutes in question against the backdrop of the facts of this case reveals that such is simply not the case, and the Arkansas Court of Appeals has so held.

Petitioner accurately sets forth the facts of the case insofar as the acknowledgement by respondents as to the compensability of petitioner's workers' compensation claim for death benefits as the result of the death of her husband. Further, petitioner acknowledges receipt of $50,000 under the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796). The state statute in question is then quoted verbatim, followed by the federal statute. It is in the interpretation and effect of the federal statute in which the sharp dispute in this case lies.

The pertinent Sections of the Public Safety Officers Benefits Act (42 U.S.C. Sec. 3796(a)) provides:

> "(a) In any case in which the Administration determines . . . that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, *the Administration shall pay* a benefit of $50,000.00 . . . to the surviving spouse of such officer;" (and)
>
> "(e) The benefit payable under this part *shall be in addition to* any other benefit that *may* be due from any other source . . ."

Petitioner is apparently laboring under the misconception that the language "shall be in addition to" somehow imposes a burden on the State of Arkansas to pay workers' compensation benefits. In order to reach this erroneous conclusion, she advances the ar-

gument that the federal statute providing the $50,000 benefits and the Arkansas Workers' Compensation laws are somehow in conflict and, therefore, the federal law "supersedes" the provisions of the Arkansas Workers' Compensation Act, specifically Act 929 of 1981, and that by virtue of the Supremacy Clause of the United States Constitution, the state law is to be given no effect. Respondents submit that this is simply not the case.

Petitioner argues that "an obvious conflict between the state and federal law is presented." Respondents, as well as the Arkansas Workers' Compensation Commission, and the Arkansas Court of Appeals, perceive no such conflict and for reasons hereinafter expressed, the argument of petitioner that Act 929 of 1981 has been "superseded" should fail, and review by this tribunal should, therefore, be denied.

The 10th Amendment to the United States Constitution provides:

> "*Rights reserved to states or people.*—The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

It is axiomatic that under the terms of the United States Constitution, certain powers are entrusted to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments.

Surely petitioner does not seriously contend that the right of the several states to enact workers' compensation legislation is a power "delegated" to the

federal government? Or that it is "prohibited" by the Constitution to the states? The power of the states to enact such laws setting forth the amounts of workers' compensation benefits, the persons to whom such benefits are payable, and the circumstances under which they are payable is clearly and undeniably vested in the states.

Is the power to enact workers' compensation laws then one which may be exercised concurrently with the federal government? If so, then, and only then, would we conceivably have the "obvious conflict" to which petitioner has mistakenly assumed exists in this case.

In discussing the inquiry as to whether there indeed exists a conflict between federal and state legislation, the author of 16 Am Jur 2d, § 292 states:

> "When the question is whether the federal act overrides a state law, the entire scheme of the statute must be considered, and a state law enacted under any of the reserved powers—especially if under the police power—is not entitled to be set aside as inconsistent with an Act of Congress, unless there is actual repugnancy or Congress has at least manifested a purpose to exercise its paramount authority over the subject. Absent an obvious repugnancy between the federal and state legislation, a state will be held barred, as a consequence of federal legislation, from legislating within a particular area *only where the intention of Congress to exclude state action is clearly manifested.* The question whether Congress and its Commission acting

> under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude a state must be answered by a judgment upon the particular case; *it will not be held that a federal statute was intended to supersede the exercise of the power of the state, unless there is clear manifestation of an intention, since the exercise of federal supremacy is not lightly to be presumed.*"

Petitioner obviously contends that the grant by the federal government of the $50,000 benefits "in addition to any other benefits which *may* be due from any other source. . ." is a manifestation of the federal government to "exclude state action," or to "supersede the exercise of the power of the state." Such an interpretation is not only a distortion, and misinterpretation, but is patently erroneous. What the federal government has really done is say, "We're going to pay our $50,000 *regardless* of what other benefits you *may* or *may not* be entitled to receive!" There is absolutely no manifestation of an intent to preempt state legislation governing the amount of workers' compensation benefits payable, or to exercise "paramount authority." In fact, the federal legislation clearly and unmistakenly recognizes and is in deference to "other benefits," such as state workers' compensation, which "*may*" be due, without even the remotest suggestion that they intended to control the amount which *may* be due,or even *whether* such benefits are due! In fact, the federal district courts have recognized that they do not have jurisdiction to determine whether a person is entitled to workers' compensation benefits under Arkansas law. *Eagle Star Insurance Co. v. Deal*, 337 F.Supp. 1264, reversed

474 F.2d 1216. Quite simply, they lack subject-matter jurisdiction in these cases. *Phifer v. Union Carbide Corp.*, 492 F.Supp. 484 (E.D. Ark. 1980).

It is abundantly clear that petitioner has misplaced her emphasis on the language of 42 U.S.C. Sec. 3796(e), specifically, her contention that the language "shall be in addition to" makes it mandatory, not only for the benefit to be paid, but for the Courts to enforce the right to the benefit. While the language "any other benefit" may indeed include workers' compensation benefits which *may* be due, the only thing made mandatory by the language "shall be in addition to" is for the federal government to pay $50,000, *regardless* of any other benefit which *may* (or may not) be due.

The entire argument of petitioner on this point simply has no application to the facts of this case because it assumes or presupposes that there is, in fact, a conflict in federal and state law which, as we have seen, simply does not exist. Moreover, the power to legislate concerning workers' compensation benefits, including the amount thereof and the circumstances under which they are payable, is not a power delegated to the federal government, nor prohibited to the state governments, nor is it an area over which the federal government has paramount authority. Neither has the federal government manifested an intention to exclude state action or to supersede the exercise of such power by the state by the use of the language "shall be in addition to any other benefit that *may* be due from any other source. . ." included within the Public Safety Officer's Benefit Act.

As far as the argument advanced by petitioner that the state act would "effectively shift the burden of the first $50,000 of workers' compensation benefits to the federal government," or that such would "subsidize the state workers' compensation program," or "defeat the benevolent intent of Congress," or that application of the state statute would "clearly stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," respondents simply point out that inasmuch as petitioner admits having received $50,000 under the federal law, how can her position on the amount of "other benefits" which "may" be due from any other source affect the "gratuity" which she admits having received? For obvious reasons, respondents feel that further comment on these arguments are unnecessary. As for petitioner's allegation that enforcement of the state statute would "effectively frustrate, thwart and nullify" the purposes of the Congress in enacting the federal law, respondents need only point out that petitioner has indeed received her $50,000 and that such benefits have been paid to ther "in addition to any other benefit that *may* be due from any other source. . ." as provided by the federal law.

As pointed out by the Arkansas Court of Appeals, the constitutionality of an offset between federal benefits and state benefits was recognized in *Richardson v. Belcher*, 404 U.S. 78 (1971) where a reduction in social security benefits to reflect workers' compensation benefits was approved. In another case, the City of Baltimore was held not liable for workers' compensation benefits where the employee received benefits in excess of the workers' compensation benefits from the employer under a city ordinance. *Nooe*

v. Baltimore, 28 Md. App. 348, 345 A.2d 134 (1974). The Arkansas Court of Appeals further pointed out and relied upon *Coletta v. State*, 106 R.I. 764, 263 A.2d 681 (1970) which held that a Rhode Island State Statute authorized the state to credit payments received from the federal government against benefits due under workers' compensation law. And in *State v. Industrial Commission*, 160 Ohio St. 443, 117 N.E. 2d 22 (1954) it was held that the Ohio General Assembly had not only the power to enact a Workers' Compensation Act but to determine under what terms and conditions employees were eligible to participate.

This is exactly what the Arkansas General Assembly has done in the instant case, except they simply determined the amount of benefits payable, a matter entirely within their province, under the 10th Amendment to the U.S. Constitution.

Petitioner argues that the state law "defeats the purpose" of Congress in providing a $50,000 death benefit "above all other benefits received." Respondents respond by simply asking (1) did petitioner receive the $50,000 gratuity?, and (2) was it in addition to all other benefits she "may" or "may not" receive? Certainly. Petitioner got exactly what the federal law provided she receive, and exactly what the state workers' compensation law provides she is entitled to receive.

CONCLUSION

Respondents earnestly submit that the Arkansas Court of Appeals was eminently correct when it stated:

> "Congress has not shown a clear-cut manifestation of an intent to exercise supremacy over a state's right to legislate workers' compensation benefits by the passage of the Public Safety Officers Death Benefits Act. We fail to see a supremacy clause argument. This is especially true when similar cases dealing with federal-state setoffs have been upheld constitutionally."

For all of the foregoing reasons, respondents urge that the decision of the Arkansas Court of Appeals was correct, that no Supremacy Clause Argument is presented, that there is no clash or conflict between state and federal law, and therefore the Petition for Writ of Certiorari should be denied.

Respectively submitted,

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